

STATE OF MINNESOTA  
Department of Agriculture

In the Matter of the Proposed Rules of the  
Department of Agriculture Governing Buying  
and Storing Grain

Minnesota Rules 1562.0100 - 1562.2200

STATEMENT OF NEED AND REASONABLENESS

**I. General Need and Authority for Rules**

The Minnesota Department of Agriculture is authorized by Minnesota Statutes, sections 16A.128, 223.19, 232.22, subds. 3 and 4, 232.24, subd. 1 and 236.08 to make rules to carry out the provisions of the grain buyers act, the grain storage act and the grain bank law.

The proposed rules set forth the policies and procedures governing the regulation of persons buying and storing grain.

The proposed rules are based on the grain buyer's act, M.S., chapter 223, the grain storage act, M.S., chapter 232 and the grain bank law, M.S., chapter 236. As such, the proposed rules bring together in one convenient source the requirements of these statutes while serving as a reference and guide for the public and as a means by the department to implement its policies and procedures.

Accordingly, the proposed rules define the grain buyer's license, the grain storage license and the grain bank license. They explain who needs to be licensed, the license requirements, and the license fees. In addition, the bonding requirements for each kind of license are explained, as well as the coverage and limitations of the bond.

Much of the department's time is spent auditing grain warehouse operations, under M.S., chapter 232. So the proposed rules describe the special license requirements for persons storing grain, the purpose of the audits, the examination fees, the department's policy with respect to moving stored grain and the grain warehouse operator's responsibility to depositors when a license is terminated. And when a grain shortage is discovered, the proposed rules describe the department's procedural response.

It is necessary and reasonable to adopt the proposed rules so that:

1. persons buying and storing grain are provided with information on who needs to be licensed and the license requirements and
2. sellers and depositors of grain are provided with information about their rights and responsibilities under the law.

## II. Need and Reasonableness of Each Rule Part

1562.0100 **Definitions.** As stated in subpart 1, the terms as defined have the meanings given to them.

Some terms are defined in the law and are included in the proposed rules for completeness and as a convenience to the reader.

The terms "grain buyer's bond," "grain storage bond," "grain purchase receipt," "independent grain buyer," "warehouse" and "vehicle" are newly defined in the proposed rules.

The "grain buyer's bond" needs to be defined so as to identify who is provided coverage and what is covered. It is reasonable to do this so that sellers of grain are informed of their coverage or lack of coverage under the bond.

While the grain buyer's bond is limited to protecting producers, the grain storage bond protects all depositors, both producers and other depositors. This is an important distinction between the bonds that is explained in the definitions.

The law does not provide that a grain buyer issue a receipt for grain purchased. It is necessary that all grain buyers including "independent grain buyers" issue a "grain purchase receipt." The definition, therefore, states who should issue the grain purchase receipt, when it should be issued and what grain data should be noted. Without such a receipt requirement, grain buyers could take delivery of grain without having to provide documentation to the producer.

The term "independent grain buyer" was not clearly defined in the statute so the proposed rule specifies those grain buyers who would be "independent grain buyers."

The law does not define "warehouse" but it is necessary to do so because the word "warehouse" is an integral part of other defined terms. And it is reasonable to define warehouse so as to identify the kinds of structures that may be used for storing grain.

The term "vehicle" is defined because the word is used in M.S., section 223.17 without the benefit of definition. By being defined by rule, grain buyers will be informed about what vehicles they have to identify to the state.

#### 1562.0200 Licensing.

This part summarizes who needs to be licensed, the license period and the number of licenses required. It is necessary and reasonable to do this so that licensees and potential licensees are informed about why and when they need to be licensed.

#### 1562.0300 License Exceptions.

M.S., section 223.16, subd. 5 defines a grain buyer as "a person who purchases grain from a producer with the exception of a person who purchases seed grain for crop production or who purchases grain as feed for the person's own livestock."

The rules, in this part, are listing the grain buyer licensing exceptions based on the above definition of a grain buyer.

The exceptions listed are typical of the license inquiries received by the department. Not everyone who buys grain is required to be licensed. It is reasonable then to inform all interested parties who should be licensed and what activities are not required to be licensed.

#### 1562.0400 Types of Licenses.

While the statutes (ch. 223 and ch. 232) refer to many kinds of grain buyers and grain warehouses there is only one kind of grain buyer's license, grain storage license and grain bank license. For example, even though there are "independent grain buyers," "private grain warehouse buyers" and "public grain warehouse buyers," they each receive the same "license to buy grain." And, the license requirements are the same for everyone.

It is necessary to be very clear, on the license certificate, about what a person is licensed to do. This way the public can tell immediately what a particular grain elevator, for example, is licensed for. In contrast, if the license certificate contained the wording "private warehouse license" a person could not tell if that elevator was licensed to buy grain, store grain or both.

The object of this part is to help the producers and depositors, we are charged with protecting, by avoiding any potential confusion with respect to what a person is licensed to do. It is both necessary and reasonable that this should be done.

#### 1562.0500 Grain Storage License Requirements.

This part enumerates the special license requirements for persons storing grain. The grain storage act does not include these requirements which are necessary to properly operate a grain storage warehouse. The object of this part is to inform all interested parties of these requirements.

Section 232.22, subd. 5(d) of the grain storage act requires that "every public grain warehouse operator must maintain in the grain warehouse at all times grain of proper grade and sufficient quantity to meet delivery obligations on all outstanding grain warehouse receipts."

It is necessary to enumerate the specific requirements which affect the warehouse operator's ability to maintain good quality grain in the warehouse because the grain storage act does not and because these requirements are a prerequisite to maintaining a safe warehouse where there is adequate equipment to move, grade and condition the grain.

The requirements of subparts 1 and 3 are stated in the grain storage act. They are restated here for the convenience of the reader. And it is reasonable to have all the license requirements together in one place.

Subpart 7 is also based on the grain storage act except that it is necessary to require that a record be maintained of each kind of grain stored as well as the various contract purchases. The subpart is making more explicit the requirements of the law so that licensees are informed of the particular record keeping requirements. The necessity of maintaining accurate books is self evident.

#### **1562.0600 Licensing of Leased Facilities.**

A licensee may own or lease a grain warehouse facility. And whether the warehouse operator is the owner or the lessee of a grain warehouse the license requirements are the same. The grain storage act does not refer to leased grain warehouse facilities so it is necessary to refer to the responsibilities of lessees in the rules.

A grain warehouse is the responsibility of the licensee and in the case where the licensee is leasing the warehouse the lessee is responsible for obtaining adequate bond and insurance coverage. This part is informing potential licensees that a license may be issued for leased facilities but the lessee must comply with the requirements of the grain storage act. This is necessary to avoid any confusion between the lessee and the lessor as to who should obtain the bond and insurance coverage.

#### **1562.0700 Bond.**

This part enumerates the bonding requirements for each of the three kinds of licenses. This is not done by either the grain storage act or the grain bank statute, so it is necessary to do so by these proposed rules. And it is reasonable to list all the different bonding requirements together for the convenience of all interested and affected parties.

The bonds are necessary to protect producers and depositors who may suffer the non-payment for grain sold or the loss of grain stored as a result of the wrongful act of a person licensed to buy or store grain. In the event of a valid loss the insurance company underwriting the bond will make prompt payment to the producer or depositor who suffered the loss, up to the amount of the bond in force.

The grain buyer's bond amounts are stipulated by M.S., section 223.17, subd. 4. They are re-stated in the rules for the convenience of the reader.

The grain storage bond is set by authority of M.S., section 232.22, subd. 4, which states that the commissioner shall prescribe the amount of the bond by rule.

The amount of the grain storage bond is based on 50% of the value of the grain under storage with a minimum required bond of \$20,000 and a maximum required bond of \$500,000.

These prescribed grain storage bond levels are not new. The Department of Agriculture is prescribing the same bonding requirements that were originally enforced by the Department of Public Service over ten years ago when that department regulated grain warehouse operators.

The grain storage bond is not, therefore, being presented in the proposed rules as a new requirement of the grain storage license. The same formula for computing the grain storage bond, within the above minimum and maximum levels, has been applied continuously for at least the past ten years.

The grain storage bond is necessary to provide protection to depositors that are storing their grain in state licensed warehouses. It indemnifies depositors for the non-delivery or non-payment of grain by a licensed grain warehouse operator for grain which is evidenced by a warehouse receipt.

Because the grain storage act does not require any minimum financial criteria for the grain storage license, the grain storage bond is also necessary to provide some protection to depositors who may suffer losses as a result of dealing with financially unsound grain warehouse operators.

To the extent that the amount of the grain storage bond proposed has been in effect for over ten years, it is reasonable for the department to so continue, especially since the bond has, at current levels, served its purpose of protecting depositors while being easily obtained by the licensee.

Most of the other grain producing states have similar bonding requirements. South Dakota, Nebraska, Colorado and Texas each have a \$500,000 maximum grain storage bond. Montana has a \$850,000 maximum grain storage bond. North Dakota and Kansas have no maximum limit.

When the potential loss to depositors is considered, it could be argued that the \$500,000 maximum bond limit is too small. The department, though, has tried to strike a balance between providing adequate protection to depositors and not creating additional financial hardships for the licensee.

For example, the average capacity of a Minnesota grain warehouse is approximately 700,000 bushels. Based on a \$3 per bushel average price of grain under storage, the average state licensed warehouse may be storing \$2,100,000 worth of grain. The average grain warehouse presents, therefore, a considerable risk to depositors who may have most of their family crop in storage at these warehouses.

Losses of any magnitude are unpredictable. But the \$500,000 maximum grain storage bond limit has been reasonable in light of the potential risk and claims experience.

The grain bank bond is set by authority of M.S., section 236.02, which states that the department shall prescribe the amount of the grain bank bond. Section 236.02 prescribes a minimum grain bank bond of \$1,500. The department has set the maximum grain bank bond at \$150,000. The bond amount is based on 50% of the value of the grain being stored for the purpose of being processed into feed. The term "grain bank" means a feed processing operation.

Grain bank operations are on a much smaller scale than grain storage operations, hence the reduced bond amounts prescribed for the grain bank bond in comparison to the grain storage bond. As with the grain storage bond, the grain bank bond levels are not new. They were originally set by the Department of Public Service over ten years ago and have been enforced without change since then.

The grain bank bond is necessary for the same reasons stated above for the grain storage bond. And to the extent that the grain bank bond proposed has been in effect for over ten years, it is reasonable for the department to so continue, especially since the grain bank bond has, at current levels, served its purpose of protecting depositors while being easily obtained by the licensee.

#### 1562.0800 Fees.

The fees for a license to buy grain are set by M.S., section 223.17, subd. 3. And these fees are restated in the rules for the convenience of the reader.

The fees for the grain storage license are set by the commissioner under the authority of M.S., section 232.22, subd. 3. As is required by this statute, the grain storage license fees are set at an amount which is estimated to cover the cost of inspecting and licensing each person with a grain storage license. There are approximately 400 grain warehouses licensed to store grain and under M.S., section 232.24, subd. 1 they must be audited twice a year.

The license fee and the examination fee are necessary to pay for the examination personnel, administration staff, examination forms, bond forms, application forms, license certificates, vehicles, examination and office equipment, statewide indirect costs and office overhead.

The second examination is performed at the request of the warehouse operator for a fee of \$20 per hour, per examiner. This fee is set at a rate which is estimated to pay for the salary, fringe benefits and travel expenses of the warehouse examiner.

The grain bank license fee is set by the commissioner, under the authority of M.S., section 236.02. And the grain bank license fee is necessary to cover the cost of administering the grain bank licensing process, which includes the cost of office staff and equipment, license certificates, bond forms, application forms, office overhead and statewide indirect costs.

All the above fees are reasonable in that they are set at an amount which is estimated to no more than cover the costs of enforcing M.S., chapters 223, 232 and 236.

#### 1562.0900 Statement of Grain in Storage.

A statement of grain in storage applies to persons with a grain storage license or a grain bank license. The grain storage act and the grain bank law authorize these reports, however the statutes do not explain what these reports should contain and what they are used for. This part also provides for an exception to filing these reports for persons who have the maximum grain storage bond or grain bank bond. This exception is reasonable in light of the fact that the sole purpose of these reports is to adjust the grain storage or grain bank bond, and the reports are unnecessary if a person has the maximum bond.

#### 1562.1000 Voluntary Extension of Credit Contract.

It is necessary in this part to clarify the grain buyers act with respect to the form and exceptions which apply to voluntary extension of credit contracts.

Subpart 1 shows where the signature lines should be contained on the contract. This subpart also provides for a procedure whereby the grain buyer can obtain the necessary signatures in the event that the contract is not signed at the time the grain is delivered. The statute does not explain this.

As the grain buyers act requires that these contracts be audited, subpart 2 provides that the contracts be pre-numbered. This is necessary and reasonable to aid the auditing process.

Subpart 3 is necessary to inform producers that, regardless of when payment is made, the title to the grain passes to the grain buyer upon delivery and that therefore no storage fees may be charged to the producer (seller). As a result, there is no storage bond coverage. And to avoid any confusion the public is reminded that there is no buyer's bond coverage either.

#### 1562.1100 Warehouse Examinations.

As authorized by M.S., section 232.24 persons with a grain storage license are subject to two audits annually. This part of the proposed rules explains the purpose of these audits and the circumstances under which a non-government audit may be performed. This is necessary because the statute does not explain the purpose of the audit and the circumstances under which it can be performed by a non-government unit. It is reasonable to do this in the proposed rules to inform and assist the licensees in complying with section 232.24.

In further assisting the licensees, subpart 5 outlines the data that must be submitted to the department by the grain warehouse operator. This data is necessary in order to determine whether a grain warehouse has sufficient grain inventory to meet all the grain storage obligations to depositors. This is the purpose of the audit referred to in M.S., section 232.24, subd. 1.

#### 1562.1200 Grain Purchase Receipt.

The grain purchase receipt is a new requirement with these proposed rules. While M.S., chapter 232 requires the licensee to issue a scale ticket and a warehouse receipt, these receipts pertain to grain warehouses buying or storing grain. It is necessary, therefore, to provide that persons who do not operate a warehouse be required to issue a receipt to the seller when grain is being purchased.

This part explains what information should be included on the grain purchase receipt. The information requested is reasonable in light of the fact that similar information is required on the scale ticket and the warehouse receipt.

#### 1562.1300 Scale Ticket.

The requirements for a scale ticket are included in this part to clarify the statute and to outline the information to be contained on the scale ticket. This is reasonable for the convenience and information of the public.

#### 1562.1400 Determination of Grade.

The price paid for grain is subject to the grade of that grain. To justify the price, a grain elevator must be equipped to grade the grain by noting the damage, moisture, foreign material and other factors relative to a grain sample. It is necessary to have the grade factors indicated on the scale ticket to verify the quality of the grain and to aid in resolving any price disputes between the grain buyer and seller.

This part is reasonable in that it conforms with general industry practice.

#### 1562.1500 Warehouse Receipt.

The statute (chapter 232) needs to be clarified with respect to when a warehouse receipt should be issued, and also with respect to the status of warehouse receipts that remain outstanding for more than one licensing year.

Five working days provide sufficient time for both the depositor and the grain warehouse to decide if the grain will be stored and to issue a warehouse receipt. Grain is frequently stored for two or more years; the last paragraph of this part provides for the continuance of the original warehouse receipt through subsequent license years. This is reasonable in light of current industry practice which has adopted this procedure.

#### 1562.1600 Charges; Rates.

The purpose of this part is to clarify and augment the statute with respect to the charges of the grain warehouse operator. M.S., section 232.23, subd. 4(b) states that a grain warehouse operator cannot charge a greater or lesser amount than that filed with the commissioner.

Subpart 1 states explicitly what the statute implies, namely that the charges must be filed with the commissioner. This is necessary to avoid a dispute over whether these charges must be filed and to remove any doubt as to the intention of the statute.

Subpart 2 requires that the charges be posted at the warehouse. This is necessary and reasonable so that a depositor can determine what the charges of a grain warehouse are.

Subpart 3 requires that depositors be notified of a pending change in the charges, by posting the revised tariff in the warehouse prior to its implementation. This is necessary and reasonable so that depositors are informed of the pending change in rates.

#### 1562.1700 Claims Against a Bond.

A substantial amount of time is spent reviewing claims. The claims are submitted to the state to be reviewed, investigated and then presented to the insurance company for payment.



Because a producer or depositor may not be aware that a claim can be filed, or how to file a claim and also because a substantial quantity of money may be at stake, it is necessary to explain in this part who can file a bond claim and when and where the claim should be filed. In addition, for the benefit of potential claimants, the bond limitations are explained. This part is necessary and reasonable to ensure that all valid claimants are provided with information necessary to get reimbursed under the bond.

#### **1562.1800 Bond Coverage.**

This part further explains the bond coverage by explaining the kind of coverage that each of the three bonds provide. This part clarifies the statute, establishes the risk being covered and informs the insurance company and potential claimants of who is protected by the bond.

#### **1562.1900 Lost, Stolen or Destroyed Warehouse Receipts.**

This part is necessary to explain the procedure to be followed in the event that a warehouse receipt is missing. The statutes do not provide any such procedures. The proposed procedures allow for the replacement of the missing warehouse receipt while at the same time reducing the risk involved to the grain warehouse operator.

#### **1562.2000 Shortages of Grain.**

It is often necessary to deal with a shortage of grain at a warehouse in conjunction with a bond claim. A grain warehouse is required by M.S., chapter 232 to maintain sufficient grain in the warehouse at all times to cover the grain storage obligations.

It is necessary to clarify the statute with respect to the procedures to be followed in the event of a grain shortage.

This part establishes a set of procedures that may be followed by the state in dealing with a grain shortage. These procedures are necessary so that problems at grain warehouses can be handled in an orderly manner and to serve as a basis for making decisions by the department. In addition, grain warehouses and depositors are informed of how the state may respond, to minimize the losses that may result from a grain shortage.

#### **1562.2100 Movement of Encumbered Grain.**

M.S., chapter 232 requires that all grain be maintained at the warehouse indicated on the warehouse receipt. The purpose of this part is to re-iterate and clarify the statute with respect to the procedure to be followed in the event a depositor wants to or is requested to move the grain to another grain warehouse.

#### **1562.2200 Termination of License; Change of Ownership.**

Because grain warehouses change ownership, it is necessary to explain in this part that the new owner may be responsible for the grain that remains in the warehouse. Unless all the grain was re-delivered to the depositors, the new owner is required to issue a new warehouse receipt to each depositor. This part is necessary and reasonable so that depositors are informed of the change in ownership and so that the state can review the license application of the new owner and obtain a new bond.

### III. Impact of the Proposed Rules on Small Businesses

Most of the grain buyers, grain bank operators and grain warehouse operators licensed by the state are a "small business" as defined in M.S., section 14.115.

While recognizing that the statutes, upon which the proposed rules are based, affect the regulation of small business almost exclusively this agency has considered the impact of the proposed rules on small businesses as follows:

#### A. The Establishment of Less Stringent Compliance or Reporting Requirements

The proposed rules do not impose any additional compliance or reporting requirements other than what is required in the statutes (chs. 223, 232 and 236).

Licensees do not have any "reporting" requirements per se except that grain storage licensees file a monthly storage report. And these reports are required by M.S., chapter 232, for the purpose of setting the grain storage bond amount.

Likewise the statutes impose some "compliance" standards in that licensees must issue receipts, prepare contracts for credit sales and maintain business books and records of the grain inventory. However, these compliance standards are required by statute and are minimal standards necessary to run a business. The proposed rules do not impose any compliance standards other than those stipulated in the statutes.

#### B. The Establishment of Less Stringent Schedules or Deadlines for Compliance or Reporting Requirements

The deadlines for compliance and reporting are determined entirely by the business transactions of the licensee and the statutes. Licenses are renewed every year on July 1st. Although the license application form, the bond and financial statement are not a "reporting" requirement per se (together they constitute the license application process) they must be submitted each year in time for the license renewal on July 1st, as required by statute. The proposed rules neither add nor subtract from this requirement.

#### C. The Consolidation or Simplification of Compliance or Reporting Requirements

This agency has simplified and consolidated some forms where it was feasible to do so. Licensees with multiple locations can now file a single application form rather than have to file a separate application for each licensed location. In addition, where a licensee both buys and stores grain, the buyer's bond and the storage bond have been combined into a single buy and store bond form.

#### D. The Establishment of Performance Standards for Small Business to Replace Design or Operational Standards Required in the Rule

Except that the proposed rules require persons storing grain to provide a safe place for the grain in storage and that the quality of the grain be maintained, no specific design or operational standards are stipulated. That is, the proposed rules specify some standards for grain storage, but the licensee may decide how these standards are implemented. The standards themselves are necessary, if depositors of grain are to be protected.

#### E. The Exemption of Small Businesses from Any or All Requirements of the Rule

The proposed rules do not impose any additional requirements on licensees other than those stipulated by statute. The requirements of the proposed rules are either the minimum necessary to carry on a grain business or specifically required by statute. Any exemption from the rules though would be contrary to the statutes.

This agency was able to make one exemption, however, in that licensees with the maximum grain storage bond or grain bank bond need not file a monthly grain storage report. Since these monthly reports are used to set the bond amount, they are not necessary if a licensee has the maximum bond.

#### IV. Conclusion

For the reasons stated, the Minnesota Department of Agriculture believes that each of the proposed rules is necessary and reasonable to effectively administer M.S., chapters 223, 232 and 236 relating to the buying and storing of grain.

**REPEALER.** The rules being repealed are rules relating to grain warehouses that were written by the Minnesota Public Service Commission in 1974. At that time the Public Service Commission regulated grain warehouses. Persons buying and storing grain are now under the jurisdiction of the Department of Agriculture.

The rules are repealed because the applicable statute has been repealed. The repealer notice is included here so that interested persons are informed that these rules are no longer in effect.

The rules being repealed are based on M.S., chapter 232. This entire chapter was repealed in 1982 and new language was enacted, also in 1982. The repealer thus applies to rules which are no longer applicable, based upon the repeal of the statute upon which the rules were based.